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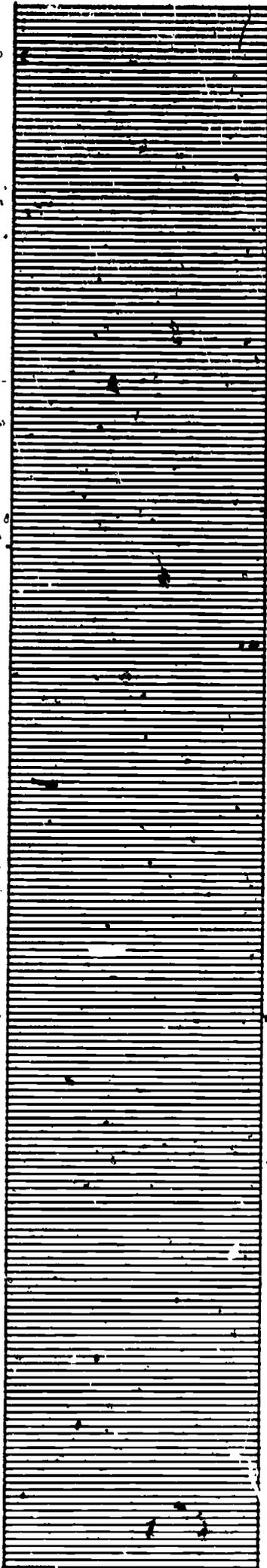
ABSTRACT This document is offered as a legislative model to the states for consideration when addressing the controversy over "opening adoption records." It is the result of an intensive review of existing legislation and approaches concerning "open records" and the creation of adoption "registries." Title I of the model act includes general provisions, i.e., the policy and purposes of the act, definitions of terms, maintenance of records, prohibited conduct, nondisclosure, and rule making. Title II concerns the establishment, use, and operation of the mutual consent voluntary adoption registry. Three options are given for establishing a registry: (1) public agency and private agency cooperation; (2) creation of a new corporation to operate the registry; and (3) public agency operation of the registry. The section on operation of the registry includes provisions on disclosing identifying information, counseling users of the registry, matching and disclosure procedures, retention of data, scope of information obtained, and fees for operations. Title III concerns the compilation and disclosure of nonidentifying information on health history and social and genetic history, the repeal of existing law, and the effective date of the act. (CB)

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AN ACT TO ESTABLISH A MUTUAL CONSENT VOLUNTARY ADOPTION REGISTRY AND TO PROVIDE FOR THE TRANSMISSION OF NONIDENTIFYING INFORMATION ON THE HEALTH HISTORY AND THE GENETIC AND SOCIAL HISTORY OF ADOPTEES

Model Act to Establish a Mutual
Consent Adoption Registry

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February 10, 1982

AN INTRODUCTORY NOTE ABOUT THE "MUTUAL CONSENT VOLUNTARY ADOPTION REGISTRY"

The controversy over "opening adoption records" was one of the issues leading to the establishment of the National Committee For Adoption, on June 23, 1980. From that date until now, our founding members -- agencies and individuals alike -- have been determined to offer a professionally sound, humane, sensitive and practical legislative model act to the States for their consideration in addressing this controversy.

In the intervening months, those same agencies and individuals have been involved in an intensive review of existing legislation and approaches concerning "open records" in a search for a workable "registry." Drafts of model acts which would establish registries have been circulated, debated and amended. The basic concepts and principles underlying this document reflect the suggestions, in writing and in person, of hundreds of concerned people. Over the last 18 months, this document was substantively redrafted three times.

Because this document deals with one of the most complex constructions of American society, the "adoption circle," it necessarily reflects that complexity in its approach. There are, we concluded, few clear-cut answers to questions that affect so many lives so intimately.

The document is also, admittedly, an imperfect and evolving approach. It is imperfect because the need to provide States with something workable to consider required us to set and enforce a deadline for final comments from the many agencies and individuals concerned about this matter. In addition, the need to make decisions required us to use a voting procedure in deciding what would be the final recommendations of the Ad Hoc Committee. In turn, our Executive Committee voted to accept the recommendations, with minimal changes and additions, of the Ad Hoc Committee. This material represents, therefore, the majority view of the Ad Hoc Committee and the view of the Executive Committee of the National Committee For Adoption, not necessarily the views of each and every member agency, board member or individual member of our organization.

The process of discussion and deliberation which is currently under way in many States, and which will continue as additional States consider this and other approaches relating to the "open records" issue means that there will be evolution and perfection of these recommendations. By design, we have included no COMMENTARY with this material. It is our plan, after this document has had an opportunity to circulate for several months, to publish a Second Edition, with COMMENTARY.

One final note: several States may wish to take no action on the core recommendation, that a registry be authorized to be established. Those States may determine that since the existing legislation serves approximately 98 percent of those involved in or affected by adoption quite well -- that is, they are very comfortable with existing guarantees of privacy and sealed records -- no legal steps to establish registries are called for. Should an active debate emerge in any State about these issues, however, this document should be a useful resource.

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1 AN ACT TO ESTABLISH A MUTUAL CONSENT
2 VOLUNTARY ADOPTION REGISTRY AND TO PROVIDE
3 FOR THE TRANSMISSION OF NONIDENTIFYING
4 INFORMATION ON THE HEALTH HISTORY AND
5 THE GENETIC AND SOCIAL HISTORY OF ADOPTEES

6 Be it enacted by the [legislative bodies] of the State
7 of _____ assembled that this Act may be cited as "An
8 Act to Establish a Mutual Consent Voluntary Adoption Registry
9 and to Provide for the Transmission of Nonidentifying Information
10 on the Health History and the Genetic and Social History of
11 Adoptees."

12 TITLE 1 -- GENERAL PROVISIONS

13 Section 101. Policy and Purposes. Adoption is based
14 upon the legal termination of parental rights and responsibilities
15 of birth parents and the creation of the legal relationship of
16 parent and child between an adoptee and his adoptive parents.
17 These legal and social premises underlying adoption must be main-
18 tained. The State recognizes that some adults who were adopted as
19 children have a strong desire to obtain identifying information
20 about their birth parents while other such adult adoptees have no
21 such desire. The State further recognizes that some birth parents
22 have a strong desire to obtain identifying information about their
23 biological children who were surrendered for adoption, while other
24 birth parents have no such desire. The State fully recognizes the
25 right to privacy and confidentiality of (1) birth parents whose
26 children were adopted, (2) the adoptees and (3) the adoptive
27 parents. The purpose of this Act is to (1) set up a mutual consent
28 voluntary adoption registry where birth parents and adult adoptees
may register their willingness to the release of identifying infor-
mation to each other, (2) to provide for the disclosure of such

1 identifying information to birth parents and their genetic off-
2 spring through a social worker employed by a licensed adoption
3 agency, provided each birth parent and the adult adoptee volun-
4 tarily registers on his own, and (3) to provide for the trans-
5 mission of nonidentifying health and social and genetic history
6 to the adult adoptees, birth parents and other specified persons.

7 Section 102. Definitions. (A) As used in this Act,

8 (1) "Adoptee" means a person who has been legally
9 adopted in the state of [].

10 (2) "Adoption" means the judicial act of creating the
11 relationship of parent and child where it did not exist previously.

12 (3) "Adoptive parent" means an adult who has become
13 a parent of a child through the legal process of adoption.

14 (4) "Adult" means a person 25 or more years of age.

15 (5) "Agency" means any public or voluntary organization
16 licensed or approved pursuant to the laws of any jurisdiction
17 within the United States to place children for adoption.

18 (6) "Birth parent" includes (1) the man or woman deemed
19 or adjudicated under the laws of a jurisdiction of the United
20 States to be the father or mother of genetic origin of a child;
21 and (2) a putative father of the child if his name appears on the
22 original sealed birth certificate of the child or if he has been
23 alleged by the birth mother to be and has in writing acknowledged
24 being the child's biological father. A putative father who has
25 denied or refused to admit paternity shall be deemed not to be
26 a birth parent in the absence of an adjudication under the laws
27 of a jurisdiction of the United States that he is the biological
28 father of the child.

1 (7) "Genetic and social history" means a comprehensive
2 report, when obtainable, on the birth parents, siblings to the
3 birth parents, if any, other children of either birth parent, if
4 any, and parents of the birth parents, which shall contain the
5 following information:

6 (a) Medical history;

7 (b) Health status;

8 (c) Cause of and age at death;

9 (d) Height, weight, eye and hair color;

10 (e) Ethnic origins;

11 (f) Where appropriate, levels of educational
12 and professional achievement; and

13 (g) Religion, if any.

14 (8) "Health history" means a comprehensive report of
15 the child's health status at the time of placement for adoption
16 and medical history, including neonatal, psychological, physio-
17 logical, and medical care history.

18 (9) "Mutual Consent Voluntary Adoption Registry" or
19 "Registry" means a place provided for herein where eligible
20 persons, as described in Section 202 below may indicate their
21 willingness to have their identity and whereabouts disclosed to
22 each other under conditions specified in this Act.

23 (10) "Putative father" means any man not deemed or
24 adjudicated under the laws of a jurisdiction of the United States
25 to be the father of genetic origin of a child and who claims or
26 is alleged to be the father of genetic origin of such child.

27 (B) As used in this Act, pronouns of the masculine
28 gender include the feminine.

1 as are necessary for implementing this law. Proposed rules and
2 regulations implementing all provisions in Titles I, II and III
3 of this law shall be published not later than sixty days after
4 the date of enactment and final rules and regulations shall be
5 promulgated one hundred and twenty days after the date the pro-
6 posed rules and regulations were published.

7
8 TITLE II -- THE VOLUNTARY REGISTRY

9 Section 201 -- OPTION 1.

10 Section 201. Establishment and Maintenance of a Mutual
11 Consent Voluntary Adoption Registry. (A) Adoptions in which
12 Licensed Voluntary Agencies were Involved. A mutual consent volun-
13 tary adoption registry shall be established and maintained by each
14 licensed voluntary agency involved in an adoption. Persons
15 eligible to receive identifying information shall work through
16 the agency involved in the adoption. If that agency has merged
17 or ceased operations, a successor agency which has the files per-
18 taining to adoptions in which the ceased or merged agency was
19 involved shall establish and maintain a mutual consent voluntary
20 adoption registry concerning those adoptions. Any licensed
21 agency may delegate or otherwise contract with another licensed
22 voluntary agency with expertise in post-legal adoption services
23 to establish, maintain and operate the registry for the delegating
24 agency. If an agency ceasing to operate does not transfer adop-
25 tion records to another licensed agency, it shall provide all
26 records required to be maintained by law to the Department of

27 [].

28 . . .

1 (B) Adoptions in which Licensed Voluntary Agencies were
2 Not Involved. With respect to adoptions arranged through the
3 Department of [], or without the involvement of any
4 licensed voluntary agency, the Department of []
5 charged with the responsibility for licensing agencies shall
6 establish and maintain the mutual consent voluntary adoption
7 registry, except that the Department may contract out the function
8 of establishing and maintaining such registry to a licensed
9 voluntary agency with expertise in providing post-legal adoption
10 services in which case such agency shall establish and maintain
11 the registry that would otherwise be operated by the Department
12 of [].

13 Section 201 -- OPTION 2.

14
15 Section 201. Establishment and Maintenance of a Mutual
16 Consent Voluntary Adoption Registry. (A) The mutual consent
17 voluntary adoption registry authorized under this Act shall be
18 operated by a separate, not-for-profit corporation created in
19 accord with the laws of [state], under the management of a board
20 of directors. The board of directors shall consist of _____
21 members appointed by the Governor to reflect the following
22 representation:

23 (1) At least fifty percent of the members appointed
24 shall be representatives appointed by public or voluntary agencies
25 in [state] of whom one-half may be representatives of the public
26 agencies and at least one-half shall be representatives of the
27 voluntary agencies;

28 . . .

1 (2) Approximately one-half of the remainder shall be
2 specialists in the various professional fields which are relevant
3 to adoption, services to unmarried parents and family counseling.
4 They shall be appointed from a list compiled and submitted to the
5 Governor by the Department of [], which shall consist of
6 the names of persons who have special qualifications, either by
7 training or experience, in one of said fields. The list shall
8 contain a number of names equal to twice the number of vacant
9 positions in this category plus one;

10 (3) The remainder of the members appointed shall be
11 residents of [state] who are interested in the work of the mutual
12 consent voluntary adoption registry either by virtue of their
13 being an adult adoptee, a birth parent, an adoptive parent, or by
14 virtue of their general interest in the well-being of the citizens
15 of [state]. They shall be appointed from a list which has been
16 compiled and submitted to the Governor by the Department of [].
17 The list shall contain a number of names equal to twice the number
18 of vacancies plus one.

19 (B) Members shall serve without pay, but shall be
20 entitled to reimbursement for the reasonable expenses of attending
21 meetings, and a per diem allowance of \$ _____ for each day the
22 board is in session.

23 (C) Members shall serve for a term of three years from
24 the date of their appointment. Those appointed to fill vacancies
25 created for any reason shall serve only the unexpired portion of
26 the term unless reappointed thereafter. Notwithstanding the
27 foregoing, approximately one-third of the initial appointees
28 shall serve for a one-year period and approximately one-third

1 shall serve for a two-year period. The approximately two-thirds
2 of the members whose initial term shall be so shortened shall be
3 chosen by casting lots among all the appointees. A board member
4 may be reappointed after serving his term of office.

5 (D) Members of the board shall choose the mutual
6 consent voluntary adoption registry administrator; oversee the
7 operations of the registry; and review and report to the Governor
8 and to the [state legislature] annually on the use of the volun-
9 tary adoption registry.

10 Section 201 -- OPTION 3.

11
12 Section 201. The Department of []
13 charged with the responsibility for licensing agencies shall
14 establish and maintain the mutual consent voluntary adoption
15 registry, except that the Department may contract out the function
16 of establishing and maintaining such registry to a licensed
17 voluntary agency with expertise in providing post-legal adoption
18 services in which case such agency shall establish and maintain
19 the registry that would otherwise be operated by the Department
20 of [].

21 Section 202. Use of the Mutual Consent Voluntary Adop-
22 tion Registry. (A) Use of a mutual consent voluntary adoption
23 registry for obtaining identifying information about birth parents
24 and adult adoptees shall be available only to birth parents and
25 adult adoptees, except that no adult adoptee who has a sibling
26 in his adoptive family who is under the age of 18 may use the
27 registry.

28 . . .



1 (B) No birth parent shall be eligible to use the
2 registry until after his genetic offspring, who was adopted,
3 has reached his twenty-fifth birthday.

4 (C) A birth father whose name has appeared in the
5 original sealed birth certificate or who has legitimated or
6 formally acknowledged the child as provided by law or who has
7 signed a voluntary abandonment and release for the child's
8 adoption as provided by state law may register.

9 (D) Any birth parent who in terminating his parental
10 rights used an alias name, and this alias is listed in the
11 original sealed birth record, may register if the agency or, in
12 cases where no agency was involved, the organization, entity or
13 person who was involved, certifies to the State Family Court
14 that the individual seeking to register used, as an alias, the
15 name set forth in the original sealed birth certificate.

16 Section 203, Operation of the Mutual Consent Voluntary
17 Adoption Registry. (A) Prerequisites to Disclosure of Identify-
18 ing Information. The adult adoptee and each birth parent, must
19 voluntarily, on his own, without having been contacted by any
20 employee or agent of the entity operating the registry, place his
21 name in the appropriate registry before any disclosure or identify-
22 ing information can be made. A qualified person may register by
23 submitting a notarized affidavit to the appropriate registry stating
24 his name, address and telephone number and his willingness to be
25 identified solely to the other relevant persons who register. No
26 registration shall be accepted until the prospective registrant sub-
27 mits satisfactory proof of his identity in accord with regulations
28 specified in section 106. The failure of any of the three

1 above described persons to file a notarized affidavit with the
2 registry for any reason, including death or disability, shall
3 preclude the disclosure of identifying information to those
4 relevant persons who do register.

5 (B) Counseling. Upon registering, the registrant
6 shall participate in not less than one hour of counseling with a
7 social worker employed by the entity that operates the registry,
8 except if a birth parent or adult adoptee is domiciled outside
9 the state, he shall obtain counseling from a social worker
10 employed by a licensed agency in that other state selected by
11 the entity that operates the registry. When an eligible person
12 registers concerning an adoption that was arranged through an
13 agency which has not merged or otherwise ceased operations, and
14 that same agency is not operating the registry, the entity
15 operating the registry shall notify by certified mail the agency
16 which handled the adoption within ten business days after the
17 date of registration.

18 (C) Cases Where Disclosure of Identifying Information
19 Cannot Occur. In any case where the identity of the birth father
20 was unknown to the birth mother, or where the Administrator learns
21 that one or both of the birth parents are deceased, this informa-
22 tion shall be shared with the adult adoptee. In these kinds of
23 cases, the adoptee will not be able to obtain identifying infor-
24 mation through the registry, and he would be told of his right
25 to pursue whatever right otherwise exists by law to petition a
26 court to release the identifying information.

27
28



1 (D) Matching and Disclosure Procedures.

2 (1) Each mutual consent voluntary adoption registry
3 shall be operated under the direction of an Administrator.

4 (2) A person eligible to register may request the
5 Administrator to disclose identifying information by filing an
6 affidavit which sets forth the following:

7 (a) the current name and address of the affiant;

8 (b) any previous name by which the affiant was
9 known;

10 (c) the original and adopted names, if known, of
11 the adopted child;

12 (d) the place and date of birth of the adopted
13 child;

14 (e) the name and address of the adoption agency or
15 other entity, organization or person placing
16 the adopted child, if known.

17 The affiant shall notify the registry of any change in name or
18 location which occurs subsequent to his filing the affidavit.

19 The registry shall have no duty to search for the affiant who
20 fails to register his most recent address.

21 (3) The Administrator of the mutual consent voluntary
22 adoption registry shall process each affidavit in an attempt to
23 match the adult adoptee and the birth parents. Such processing
24 shall include research from agency records, when available, and
25 when agency records are not available, research from court records
26 to determine conclusively whether the affiants match.

27 (4) The Administrator shall determine that there is a
28 match when the adult adoptee, the birth mother and the birth

1 father have each filed affidavits with the mutual consent volun-
2 tary adoption registry and have each received the counseling
3 required in section 203(B).

4 (5) When a match has taken place, the mutual consent
5 voluntary adoption registry Administrator shall assign the match
6 and transfer such information as may be necessarily related to
7 the match to the agency, if any, which processed the adoption.
8 If the adoption was processed without resort to an agency, the
9 match shall be referred to the Department of [] for assignment.

10 (6) An agency or department receiving an assignment of
11 a match under the provisions of this Act shall directly or by
12 contract with a licensed adoption agency in this state notify all
13 parties through a direct and confidential contact. The contact
14 shall be made by an employee or agent of the agency receiving the
15 assignment and shall be made face-to-face, rather than by mail,
16 telephone or other indirect means. Said employee or agent shall
17 be a trained social worker who has expertise in post-legal adoption
18 services.

19 (E) Retention of Data by the Registry. Any affidavits
20 filed and other information collected shall be retained for ten
21 years following the date of registration by any qualified person
22 to which the information pertains. Any qualified person who
23 registers may renew his registration for ten additional years
24 within 180 days prior to the last day of ten years from the date
25 of initial registration.

26 (F) Scope of Information Obtained by the Mutual Consent
27 Voluntary Adoption Registry. A mutual consent voluntary adoption
28 registry shall obtain only information necessary for identifying

1 a birth parent or adult adoptee and in no event shall obtain
2 information of any kind pertaining to the adoptive parents, any
3 siblings to the adult adoptee who are children of the adoptive
4 parents, the income of anyone and reasons for adoptive placement.

5 (G) Fees for Operations of the Mutual Consent Voluntary
6 Adoption Registry. All costs for establishing and maintaining a
7 mutual consent voluntary adoption registry shall be obtained
8 through user's fees charged to all persons who register.

9
10 TITLE III -- DISCLOSURE OF
NONIDENTIFYING INFORMATION

11 Section 301. The Compilation of Nonidentifying Informa-
12 tion on Health History and Social and Genetic History. (A) Prior
13 to placement for adoption, the licensed adoption agency or, where
14 an agency is not involved, the person, entity or organization
15 handling the adoption, shall compile and provide to the prospec-
16 tive adoptive parents a detailed written health history and genetic
17 and social history of the child which excludes information which
18 would identify birth parents or members of a birth parent's family
19 and is set forth in a document that is separate from any document
20 containing such identifying information.

21 (B) Records containing such nonidentifying information
22 and which are set forth on a document that is separate from any
23 document containing identifying data:

24 (1) Shall be retained by the agency or, when no agency
25 is involved, by the person, entity or organization handling the
26 adoption, for ninety-nine years, and if an agency or person,
27 entity or organization who handled the adoption ceases to function,
28 such agency or intermediary shall transfer records containing such

1 nonidentifying information on the adoptee to the Department of
2 [], except that a licensed agency ceasing operations
3 may transfer such records to another licensed agency within this
4 state, provided the agency transferring the records gives notice
5 of the transfer to the Department of []; and

6 (2) Shall be available upon request, throughout the
7 time specified in (B) (1) above together with any additional non-
8 identifying information which may have been added on health or
9 on genetic and social history, but which excludes information
10 identifying any birth parent or member of a birth parent's family,
11 or the adoptee or any adoptive parent of the adoptee, to the
12 following persons only:

13 (a) the adoptive parents of the child or, in the
14 event of death of the adoptive parents, the
15 child's guardian;

16 (b) the adoptee upon reaching the age of eighteen;

17 (c) in the event of the death of the adoptee, the
18 adoptee's spouse if he is the legal parent of
19 the adoptee's child or the guardian of any
20 child of the adoptee;

21 (d) in the event of the death of the adoptee, any
22 progeny of the adoptee who is age eighteen or
23 older;

24 (e) the birth parent of the adoptee.

25 (C) The actual and reasonable cost of providing non-
26 identifying health history and genetic and social history shall
27 be paid by the person requesting such information.
28

1 Section 302. The following provisions of existing law
2 are hereby repealed: []

3 Section 303. If any provision of this Act is held
4 invalid, the remaining provisions of the Act shall continue in
5 effect.

6 Section 304. The Act shall become effective immediately
7 except that Title II and subsections (B) and (C) of section 301
8 shall be effective only for the purpose of rulemaking, as pro-
9 vided in section 106 herein, until 90 days following the date of
10 publication of the final rules and regulations on which date
11 Title II and section 301(B) and (C) shall become effective in
12 all respects.

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